

*Parties and counsel listed on signature pages*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: SOCIAL MEDIA ADOLESCENT  
ADDICTION/PERSONAL INJURY  
PRODUCTS LIABILITY LITIGATION

Case No. 4:22-MD-03047  
MDL No. 3047

**JOINT STIPULATION AND [PROPOSED]  
ORDER REGARDING WITHDRAWAL OF  
COUNSEL**

\_\_\_\_\_  
This Document Relates to:

ALL ACTIONS

The Personal Injury Plaintiffs (“PI Plaintiffs”) and Defendants (collectively with Plaintiffs, the “Parties”), hereby submit the following Stipulation and [Proposed] Order Regarding Withdrawal of Counsel.

WHEREAS, PI Plaintiffs have informed the Court and Defendants that counsel for certain personal injury plaintiffs have been unable to make contact with their clients. In some but not all of these cases, counsel for the unresponsive plaintiffs have indicated that they intend to move to withdraw.

WHEREAS, the PI Plaintiffs and Defendants agree that where a plaintiff is unresponsive to counsel, counsel should be permitted to withdraw and the plaintiff’s claims should be dismissed for failure to prosecute if the plaintiff, having received adequate notice, does not re-engage and advise the Court of a desire to proceed. The PI Plaintiffs and Defendants propose

1 below a protocol for handling attorney withdrawal and dismissal under Rule 41(b) in these  
2 circumstances.

3 WHEREAS, under Civil Local Rule 11-5, counsel may withdraw from representation  
4 only with the Court's permission. The Court has discretion to determine whether a request to  
5 withdraw is made with good cause. In exercising this discretion, it applies California Rule of  
6 Professional Conduct 1.16(b), which lists factors warranting permissive withdrawal of counsel.  
7 Under the Rule, withdrawal is permissible where the client's conduct "renders it unreasonably  
8 difficult for the lawyer to carry out the representation effectively." Cal. Rule of Prof'l Conduct  
9 1.16(b)(4).

10 WHEREAS, it is unreasonably difficult for a personal injury plaintiff's counsel to carry  
11 out the representation in this MDL if the plaintiff fails or refuses to communicate with counsel.  
12 See *Tikotzky v. Remax Real Pros*, 2020 WL 13281523, at \*1 (C.D. Cal. Oct. 13, 2020); *Connally*  
13 *v. Cafe*, 2016 WL 1697937, at \*2 (N.D. Cal. Apr. 28, 2016); *Ortiz v. Freitas*, 2015 WL 3826151,  
14 at \*2 (N.D. Cal. June 18, 2015) ("Mr. Ortiz's failure to maintain regular contact with his counsel  
15 and cooperate in moving the litigation forward constitutes good cause for withdrawal."). Where  
16 both the Court and counsel have provided explicit written notice, permitting withdrawal does not  
17 cause harm to the administration of justice and will advance, rather than delay, the ultimate  
18 resolution of the plaintiff's case. See *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., &*  
19 *Prod. Liab. Litig.*, 2019 WL 13268604, at \*1 (N.D. Cal. Aug. 30, 2019). This may be so even if  
20 the client does not consent to the withdrawal. *Robinson v. Delgado*, 2010 WL 3259384, at \*2  
21 (N.D. Cal. Aug. 18, 2010) (noting that the "consent of the client is not dispositive").

22 WHEREAS, Federal Rule of Civil Procedure 41(b) provides for the involuntary dismissal  
23 of an action when "the plaintiff fails to prosecute or to comply with these rules or a court order."  
24 Fed. R. Civ. P. 41(b). "District courts have the inherent power to control their dockets and, '[i]n  
25 the exercise of that power they may impose sanctions including, where appropriate, . . . dismissal  
26 of a case.'" *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (citation omitted). The need  
27 for vigilance in maintaining control over the Court's docket and promoting efficient conduct of  
28

1 the litigation is more acute, and the Court’s discretion is accordingly greater, in the context of  
 2 multidistrict litigation. *In re Phenylpropanolamine (PPA) Prods. Liability Litig.*, 460 F.3d 1217,  
 3 1226 (9th Cir. 2006); see also *In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.*,  
 4 496 F.3d 863, 867 (8th Cir. 2007) (noting that “MDL courts must be given greater discretion to  
 5 organize, coordinate and adjudicate its proceedings, including the dismissal of cases for failure to  
 6 comply with its orders”). The Court has the power to dismiss an action sua sponte for failure to  
 7 prosecute. *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984).

8 WHEREAS, when determining whether to dismiss an action for failure to prosecute,  
 9 courts weigh five factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the  
 10 court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
 11 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
 12 sanctions.” *In re PPA*, 460 F.3d at 1226 (citation omitted). Taking these factors into  
 13 consideration, several courts in the Ninth Circuit have ruled that a plaintiff who fails or refuses to  
 14 communicate with their attorneys should at least be required to show cause why their case should  
 15 not be dismissed. See *Williams v. County of Fresno*, 2022 WL 209327 (E.D. Cal. Mar. 3, 2022)  
 16 (recommending dismissal)<sup>1</sup>; *McConnell v. United States*, 2021 WL 4818946 (N.D. Cal. Oct. 15,  
 17 2021) (ordering the plaintiff to show cause).

18 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, SUBJECT TO  
 19 THE COURT’S APPROVAL:

20 1. If counsel for any personal injury plaintiff has lost the ability to communicate  
 21 effectively with that plaintiff, counsel should move the Court for permission to withdraw  
 22 pursuant to Civil Local Rule 11-5. In so moving, Plaintiff’s counsel must document that his or  
 23 her client has repeatedly failed to respond to counsel’s communications in a manner consistent  
 24 with counsel’s confidentiality obligations.

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 27 <sup>1</sup> *Findings and recommendations adopted*, 2022 WL 624567 (E.D. Cal. Mar. 3, 2022).

1           2. The Court will then enter a show-cause order (attached hereto as Exhibit A)  
2 directing the plaintiff to advise the court in writing within **thirty-five (35) days** whether he or  
3 she intends to proceed with the case, either through current counsel, with substitute counsel, or  
4 without counsel. The order will advise the plaintiff that if the plaintiff responds to the Court that  
5 he or she no longer desires to proceed with the case, or if the plaintiff fails to respond within the  
6 time provided, the plaintiff's claims will be dismissed for failure to prosecute under Fed. R. Civ.  
7 P. 41(b).

8           3. Simultaneous with any motion to withdraw, the plaintiff's counsel must send to  
9 the plaintiff, by any means available, written notice that counsel has sought the Court's  
10 permission to withdraw because of the failure to communicate.

11           4. Plaintiff's counsel shall mail the Court's show-cause order to the plaintiff at the  
12 plaintiff's home address. The plaintiff's counsel shall be required to make diligent continued  
13 efforts to contact the plaintiff during the 35-day notice period. The plaintiff's counsel shall  
14 promptly inform the Court if it succeeds in re-establishing communication with the plaintiff  
15 during the 35-day notice period.

16           5. If the plaintiff timely responds to the show-cause order, the Court shall exercise  
17 its discretion in determining whether to permit counsel's withdrawal.

18           6. If the plaintiff timely responds to the show-cause order and states that he or she  
19 no longer wishes to proceed with the case, or if the plaintiff fails to respond to the show-cause  
20 order, the Court shall enter an order permitting counsel's withdrawal, and shall separately enter  
21 an order dismissing the plaintiff's claims.

22  
23 **IT IS SO STIPULATED**, through Counsel of Record.

24 Dated: July 21, 2024

25  
26 By: /s/ Lexi J. Hazam

27 LEXI J. HAZAM

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17 *Attorneys for Defendants YouTube, LLC and  
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19 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

20 Dated: \_\_\_\_\_

21 \_\_\_\_\_  
22 YVONNE GONZALEZ ROGERS  
23 UNITED STATES DISTRICT JUDGE  
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**ATTESTATION**

I, Lexi J. Hazam, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

Dated: July 21, 2024

By: /s/Lexi J. Hazam